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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/933,260	08/20/2001	Mahshid Ellie Abdollahi	68775-043	5264
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21890 7590 06/13/2005

PROSKAUER ROSE LLP
PATENT DEPARTMENT
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NEW YORK, NY 10036-8299

EXAMINER

TON, DANG T

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/933,260	Applicant(s) ABDOLLAHI ET AL.	
	Examiner DANG T TON	Art Unit 2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 August 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 16-19 is/are allowed.
- 6) Claim(s) 1-8 and 12-15 is/are rejected.
- 7) Claim(s) 9-11 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The disclosure is objected to because of the following informalities: Applicant should provide the status of copending applications recited in the specification including the filing date.

Appropriate correction is required.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

3. Claims 1-8 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 7, " the message" has no antecedent basis. Similar problem exists in claims 2-4.

In claim 12 line 3-4, " the particular command" and " the previously received particular packet" have no antecedent basis.

Claim 5-8 and 13-15 are rejected since they depend from claim 1 or claim 12.

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4. Claims 1-15 are objected to under 37 C.F.R. 1.75 because of the following formalities:

In claim 1 line 5, " a payload " seems to refer back to " a payload" recited at line 4. If this is true, it is suggested to change " the payload" to --- the payload ---. Similar problem exists in claim 9.

Claims 2-8 and 10-15 are objected since they depend from claim 1 or claim 9.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No.

09/933,265. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because of the following formalities:

For claims 1-8, the claims 1-10 of the copending application number 09/933,265 discloses a method of managing one or more nodes comprising the steps of: (a) forming a packet comprising a network layer header, including a destination address for routing a packet to a destination, a second header identifying a syntax and semantic by which a payload of the packet may be parsed in a predefined fashion, and a payload containing a message to be executed by each of one or more to-be-managed nodes to which the packet is destined, (b) transmitting the packet plural times to a plurality of nodes, including the one or more to-be-managed nodes, wherein the message in the particular packet is executed only a single time regardless of the number of times that a copy of the particular packet is received in the state enabling execution by the to-be-managed nodes of the message therein, and wherein the transmission of the particular packet plural times increases the likelihood that each of the to-be-managed nodes receives at least one copy of the particular packet in the state enabling execution of the message contained therein;

wherein said message is a command;

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wherein said message is one of a command message, control message, file download message, auto discovery message, and keep-alive message;

further comprising the step of: (c) after transmitting the particular packet plural times transmitting a second packet at least once containing a command for causing one or more of the to-be-managed nodes to execute once a command previously received one or more times in one of the previously transmitted packets, regardless of the number of copies of the particular packet received in a state enabling execution by the to-be-managed nodes of the command therein;

wherein a to-be-managed node stores each copy of each command received in one or more of the particular packets, but executes only a single version of each command received regardless of the number of copies of the particular packet received in a state enabling execution by the to-be-managed nodes of the command therein;

further comprising the step of: (d) inserting into the particular packet information identifying a version of the command contained therein for purposes of enabling a to-be-managed node to identify duplicate copies of the command which need not be executed;

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wherein the particular packet is inserted into a digital program signal containing variable length programs, so as not to disrupt the relative arrival timing of portions of the program signal;

wherein the particular packet is transmitted via a broadcast satellite network;

wherein step (b) transmits said packet plural time after a predetermined delay; and

wherein each of the one or more to-be-managed nodes lacks a return path for acknowledging to a source of the particular packet that the particular packet has been received in a state enabling execution of the message contained therein.

Note : see claims 1-10 of the copending application.

Applicant's claims 1-8 merely broaden the scope of copending application 09/933,265 claims 1-10 by eliminating the terms "only a single time regardless of the number of times that a copy of the particular packet is received in the state enabling execution by the to-be-managed nodes of the message therein " and "increases the likelihood that each of the to-be-managed nodes receives at least one copy of the particular packet in the state enabling execution of the message contained therein "from claim 1 of the copending application. It has been

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held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re karlson, 136 USPQ 184 (CCPA). Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969); omission of a reference element whose function is not need would be obvious to one skilled in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 9-11 would be allowable if rewritten to overcome the objection under 37 C.F.R 1.75.

7. Claims 16-19 are allowed.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mallory et al. (6,877,043) and Bagchi et al. (6,882,634) are all cited to show systems which are considered pertinent to the claimed invention.

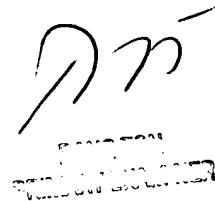
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANG T TON whose telephone number is 571-272-3171. The examiner can normally be reached on MON-WED, 5:30 AM-6:00 PM and Thur 5:30-9:30 A.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Ton

A handwritten signature, possibly 'D. Ton', is written in black ink. Below the signature is a rectangular stamp with some illegible text, likely a date or administrative mark.